IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

RCRev..No. 251 of 2007

RCA.13/2005 of ADDL. DISTRICT COURT, N.PARAVUR
RCP.25/2003 of MUNSIFF'S COURT, N.PARAVUR
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REVN. PETITIONERS/APPELLANTS/RESPONDENTS
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1. NARAYANAN NAMBOOTHIRI, S/O. VIDYAN NAMBOODIRI, BUSINESS, KASAMKOTTATHU, CHERAI MURI, PALLIPURAM VILLAGE, KOCHI TALUK.

2. VIJAYALAKSHMI, W/O. NARAYANAN NAMBOOTHIRI, KASAMKOTTATHU, CHERAI MURI, PALLIPURAM VILLAGE, KOCHI TALUK.

BY ADV. SRI.BIJU ABRAHAM
SRI.SREEVALSAN.V

RESPONDENTS: RESPONDENT/PETITIONER

P.K.BABU, S/O. KRISHNAPPAN,
PONATH HOUSE, CHERAI MURI, PALLIPURAM VILLAGE,
KOCHI TALUK.

BY ADV.SRI.T.A.SHAJI

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

K. T.SANKARAN, JJ.

R.C.R. No.251 of 2007

Dated 1st August, 2007.

ORDER

Balakrishnan Nair, J.

The tenants are the revision petitioners. The respondent is the landlord. The landlord filed the R.C.P for eviction of the tenanted premises under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The parties are hereinafter referred to as they are arrayed in the Rent Control Petition, for the sake of convenience.

2. The case of the petitioner landlord briefly stated, is as follows: He is the owner of the premises. The petition schedule shop room is rented out to the respondents tenants on a monthly rent of Rs.562/- from March, 2002 onwards. He was working in West Bengal. Now he has retired and returned to his native place. He requires the room occupied by the respondents for conducting a 'C' class shop. He is not in possession of any other suitable shop room. So, the petition schedule shop room is required for his bona fide occupation. Further,

the rent is remaining in arrears since October, 2002. According to the respondents, the rent is only Rs.425/- per month. On the other hand, the petitioner claims that the rate of rent is Rs.562/- per month. Apparently because of this dispute, the rent is remaining in arrears from October, 2002 onwards. The respondents have failed to pay the rent and arrears of rent have accumulated since October, 2002. Hence the petition under Sections 11(2)(b) and 11(3) of the Act.

3. The respondents resisted the petition, stating that the monthly rent was only Rs.425/- and not Rs.562/- as claimed by the petitioner. They had also paid Rs.15,000/- as advance, while the room was taken on rent. The claim of the petitioner that he requires the room for running a 'C' class business is false and it has been set up only for filing this petition. They submit, they have offered the rent at the rate of Rs.425/-, but the petitioner has declined to accept the same.

4. From the side of petitioner Exts.A1 to A5 were marked and Pws.1 and 2 were examined. From the side of the respondents Exts.B1 to B12 were marked. The 1st respondent was examined as RW1 and another witness was examined as RW2. The Rent Control Court

ordered eviction under Sections 11(2)(b) and 11(3) of the Act. The respondents appealed, challenging both the grounds. Both the grounds were upheld by the appellate authority.

5. The learned counsel for the revision petitioners attacked the finding of the appellate authority on the rate of monthly rent as based on no evidence. The appellate authority re-examined the entire evidence and the ground under Section 11(2)(b) was found in favour of the landlord. The rate of rent was found as Rs.562/-, based on an admission of the respondents in an earlier proceedings, in which they produced Ext.A5 rent receipt for Rs.562/-. Ext.A1 rent deed also show that the rent is Rs.562/-. The said finding is a reasonable finding on the facts, with which we fully concur. At any rate, the same cannot be described as perverse or one which no reasonable Tribunal will arrive at.

6. The order of eviction under Section 11(3) was attacked by the respondents mainly on three grounds. The first ground was that the earlier proceedings under Section 11(4)(v) that the room is kept without use ended in dismissal and therefore, the present petition is filed to get over the same. The second ground is that finding on the bona fide

need put forward by the petitioner for running a 'C' class business is unsustainable. The third ground is that the petitioner has alternate accommodation for doing the business. The appellate authority rightly found that the dismissal of the petition under Section 11(4)(v) will not bar a second petition under Section 11(3). After analysing the evidence, the appellate court found that the claim of the petitioner that he proposes to commence a 'C' class business in the tenanted premises is genuine and bona fide. The petitioner is a retired hand and he has to eke out his living, for which he intends to start a 'C' class business. So, the said claim of the petitioner was accepted by both the courts below. We feel that the same is also a finding fully justified on the materials on record.

7. The learned counsel for the revision petitioners elaborately argued on the findings under the first and second provisos to Section 11(3). It is pointed out that a neighbouring room was available for the petitioner to start the 'C' class business. Though there was a tea-shop in the premises, the same was stopped and therefore, the said room was available. At the appellate stage a commission was taken out and the Commissioner has reported that the said room is remaining vacant

without doing any business there. Based on the said finding of the Commissioner, the respondents would contend that the finding of the appellate authority that the room is still with the tenant, is untenable. It is a finding based on no evidence, it is contended. The learned counsel also submitted that subsequent to the dismissal of the appeal, the said shop room has been demolished. So, the same would prove that the finding of the appellate court was not correct.

8. But, going by the materials on record, the conclusion that is possible based on the Commissioner's report is that the shop room was not being used by the tenant for the running of the tea-shop. It does not necessarily imply that the tenant has already vacated and gave vacant possession of the premises to the landlord. So, the finding of the appellate court that the said room was not available, even assuming the contention of the petitioner that there was no evidence to show that the tenant was running a transport business is correct, cannot be said to be perverse. At any rate, it is a plausible view and therefore, it is not a matter with which this Court can interfere under Section 20 of the Act.

9. The finding on the second proviso to Section 11(3) that the tenants were not mainly dependant on the income derived from the business conducted in the petition schedule shop room is also a plausible finding of fact arrived at based on the materials before the court below. It is for the tenant to establish that he is dependant mainly on the income derived from the business conducted in the premises and no other convenient room is available in the neighbourhood. Going by the evidence, the findings of the appellate authority that the tenants have failed to do that is fully justified.

10. In the result the Rent Control Revision fails and it is dismissed. Having regard to the facts of the case, the respondents are granted three months' time to vacate the premises, provided they file an affidavit before the Rent Control Court, undertaking to vacate the premises within three months. They shall also pay the entire arrears of rent that accrued till date and continue to pay the same every month till they vacate the premises. The affidavit, as directed above, shall be filed

within three weeks from today.

K.BALAKRISHNAN NAIR, JUDGE.

K.T.SANKARAN, JUDGE.

nm.